

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**J.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Philadelphia, PA, Employer**

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**Docket No. 11-912  
Issued: November 8, 2011**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On March 1, 2011 appellant filed a timely appeal from an Office of Workers' Compensation Programs' (OWCP) decision dated November 1, 2010. Pursuant to the Federal Employees' Compensation Act (FECA)<sup>1</sup> and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant sustained a recurrence of disability on July 15, 2010.

**FACTUAL HISTORY**

Appellant, then a 32-year-old letter carrier, experienced pain in his lower back while turning around on November 29, 2004. He filed a claim for benefits, which OWCP accepted for displacement of lumbar intervertebral disc without myelopathy. OWCP paid appellant

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

temporary total disability compensation from January 14 to March 14, 2005. Appellant subsequently missed work for intermittent periods and was placed on light duty.

On September 8, 2010 appellant filed a Form CA-2a, claim for benefits, alleging that he sustained a recurrence of disability on July 15, 2010 causally related to his November 29, 2004 employment injury. He stated on the form that the recurrence was due to severe pain he experienced after receiving epidural injections in his lumbar spine on July 15, 2010; these injections were administered to ameliorate low back pain stemming from his November 29, 2004 employment injury.

The record indicates that appellant was authorized to receive three epidural injections during the time period July 15 to September 15, 2010.

In an August 18, 2010 report, Dr. Don A. Koenigsberg, an osteopath, stated that he had been treating appellant since March 13, 2006 for low back pain which radiated to his left posterior thigh, to his knee and occasionally to his ankle and foot. He indicated that appellant's symptoms originated from his initial 2004 twisting incident at work, which resulted in severe pain, numbness and tingling in his leg. Dr. Koenigsberg stated that the results of a magnetic resonance imaging scan of his lumbar spine showed a left herniated disc at L5-S1 with displacement of the left S1 nerve root. Appellant also had degenerative disc disease from L4 through S1.

Dr. Koenigsberg advised that appellant had periods of reduced pain where he was able to work as a letter carrier; however, the pain would occasionally flare up, resulting in the need for therapeutic epidural steroid injections. Following these injections appellant would always take off work on the day of the procedure and one or two additional days thereafter. Dr. Koenigsberg stated that appellant's most recent set of injections was on July 15, 2010, when he administered transformational lumbar epidural steroid injections at L4, L5 and SI on the left under fluoroscopic guidance, as well as a left sacroiliac joint injection under fluoroscopic guidance. He advised that those injections were for a diagnosis of a herniated disc at L5-SI and left sacroiliitis. Dr. Koenigsberg stated that appellant experienced significant pain following that procedure, which required him to take the next week off of work. Appellant's pain resolved and he resumed his normal work duties.

By decision dated November 1, 2010, OWCP denied the recurrence of disability claim. It found that appellant failed to submit medical evidence sufficient to establish that the claimed condition or disability as of July 15, 2010 was caused or aggravated by the accepted lumbar condition.

### **LEGAL PRECEDENT**

A claimant has the burden of establishing the essential elements of his claim, including that the medical condition for which compensation is claimed is causally related to the employment injury.<sup>2</sup> For wage-loss benefits, the claimant must submit medical evidence showing that the condition claimed is disabling. The evidence submitted must be reliable,

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<sup>2</sup> 20 C.F.R. § 10.115 (e); see *Tammy L. Medley*, 55 ECAB 182 (2003).

probative and substantial.<sup>3</sup> Benefits are available only while the effects of a work-related condition continue. Compensation for wage loss due to disability is available for periods during which a claimant's work-related medical condition prevents him from earning the wages earned before the work-related injury.<sup>4</sup>

An injured claimant may also be entitled to compensation for lost wages incurred while obtaining authorized medical services.<sup>5</sup> This includes the actual time spent obtaining the medical services and a reasonable time spent traveling to and from the medical provider's location. As a matter of practice, OWCP generally limits the amount of compensation to four hours with respect to routine medical appointments. However, longer periods of time may be allowed when required by the nature of the medical procedure and/or the need to travel a substantial distance to obtain the medical care.<sup>6</sup>

### ANALYSIS

The Board finds that the case is not in posture for decision.

In the present case, appellant filed a claim for a recurrence of disability on July 15, 2010 causally related to his November 2004 accepted lumbar injury. OWCP proceeded to adjudicate this claim as one for a recurrence of disability. Appellant contended in his September 8, 2010 claim for a recurrence of disability that he experienced severe pain after receiving epidural injections in his lumbar spine on July 15, 2010. He asserted that these injections were given to reduce low back pain stemming from his November 29, 2004 work injury. Dr. Koenigsberg stated in an August 18, 2010 report that appellant continued to experience lumbar pain from his November 2004 work injury which necessitated occasional epidural steroid injections at L4-5, SI on the left and in the left sacroiliac joint, under fluoroscopic guidance. While appellant would typically take off work the day he received these injections and for a day or two afterwards, Dr. Koenigsberg stated that following appellant's most recent set of injections on July 15, 2010 he experienced significant pain which required him to take off the following week from work. The Board has held that disability resulting from surgery or treatment authorized by OWCP is compensable.<sup>7</sup> As OWCP had authorized the epidural injection, any disability resulting therefrom would be compensable.

The Board finds that, while Dr. Koenigsberg's August 18, 2010 report is not sufficient to establish appellant's claim for total disability arising from consequential injury, it is sufficiently supportive to require further development of the medical evidence. Appellant would be entitled to a period of wage loss for the day he received the epidural injection, July 15, 2010. He may also be entitled to a period of disability causally related to the epidural injection. The medical

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<sup>3</sup> *Id.* at § 10.115(f).

<sup>4</sup> *Id.* at § 10.500(a).

<sup>5</sup> *See* 5 U.S.C. § 8103(a).

<sup>6</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Administrative Matters*, Chapter 2.900.8 (August 2011).

<sup>7</sup> *Carmen Dickerson*, 36 ECAB 409 (1984).

evidence submitted provided an accurate history of the July 15, 2010 treatment. Dr. Koenigsberg noted that appellant received an epidural injection to treat back pain stemming from the 2004 accepted injury. It is apparent appellant sustained a period of disability attributable to the authorized medical treatment. Although the report of Dr. Koenigsberg is insufficiently rationalized to establish that appellant was totally disabled for an entire week, the Board finds that it is sufficiently supportive of the claim that further development is warranted.<sup>8</sup> Dr. Koenigsberg should be requested to further address the period of disability related to the July 15, 2010 epidural injection. After such further development as it deems appropriate, OWCP should issue a merit decision.

### **CONCLUSION**

The Board finds that the case is not in posture for decision. The case is remanded for further development of the medical evidence.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the November 1, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development in accordance with this decision.

Issued: November 8, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>8</sup> *John J. Carlone*, 41 ECAB 354 (1989); *see also Cheryl A. Monnell*, 40 ECAB 545 (1989); *Bobby W. Hornbuckle*, 38 ECAB 626 (1987); *Horace Langhorne*, 29 ECAB 820 (1978) (if medical evidence establishes that residuals of an employment-related impairment are such that they prevent an employee from continuing in the employment, he is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity).